

AMENDED IN SENATE MAY 27, 2014

AMENDED IN ASSEMBLY JANUARY 15, 2014

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1256**

---

### **Introduced by Assembly Member Bloom**

February 22, 2013

---

An act to amend Section 1708.8 of, and to add Section 1708.9 to, the Civil Code, relating to civil law.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1256, as amended, Bloom. Civil law: privacy: entry and exit of facilities.

Existing law provides that a person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another person without permission or otherwise commits a trespass in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person.

This bill would recast these provisions to instead provide that a person is liable for a physical invasion of privacy when the defendant knowingly enters onto the land of another person without permission or otherwise commits a trespass with the intent to capture any type of visual image, sound recording, or other physical impression of the

plaintiff engaging in a private, personal, or familial activity and the invasion occurs in a manner that is offensive to a reasonable person. The bill would define “private, personal, or familial activity,” as specified, and provide that this definition applies to physical and constructive invasion of privacy.

Existing law provides that it is a crime punishable by a fine not exceeding \$500, by imprisonment in a county jail for a period of not more than 6 months, or by both that fine and imprisonment, or by a greater fine and a longer period of imprisonment if the defendant has been previously convicted of a specified violation of law, to come into any school building or upon any school grounds, without lawful business thereon, if the defendant’s presence or act interferes with the peaceful conduct of the activities of the school or disrupts the school or its pupils or school activities and the defendant remains there after being asked to leave, reenters or comes upon that place within 7 days of being asked to leave, has otherwise established a continued pattern of unauthorized entry, or willfully or knowingly creates a disruption with the intent to threaten the immediate physical safety of any pupil in preschool, kindergarten, or any of grades 1 to 8, inclusive, arriving at, attending, or leaving from school, as specified.

This bill would provide that it is unlawful for any person, except a parent or guardian acting toward his or her minor child, to, by force, threat of force, or physical obstruction that is a crime of violence, intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with any person attempting to enter or exit a facility, or to, by nonviolent physical obstruction, intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with any person attempting to enter or exit a facility. The bill would define “facility” for purposes of these provisions as any public or private school grounds, any health facility, or any lodging, including a private residence, hotel, temporary lodging facility, inn, motel, bed and breakfast, or any other location that provides permanent or temporary lodging to persons. The bill would authorize a person aggrieved by a violation of these provisions to bring a civil action to enjoin the violation, for compensatory and punitive damages, for injunctive relief, and for the cost of suit and reasonable attorney’s and expert witness’ fees, or with respect to compensatory damages, to elect, in lieu of actual damages, an award of statutory damages, as specified. The bill would also authorize the Attorney General, a district attorney, or a city attorney to bring a civil action to enjoin a violation of these provisions, for

compensatory damages to persons and entities aggrieved by the violation, and for the imposition of a civil penalty, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1708.8 of the Civil Code is amended to  
2 read:

3 1708.8. (a) A person is liable for physical invasion of privacy  
4 when the defendant knowingly enters onto the land of another  
5 person without permission or otherwise committed a trespass in  
6 order to capture any type of visual image, sound recording, or other  
7 physical impression of the plaintiff engaging in a private, personal,  
8 or familial activity and the invasion occurs in a manner that is  
9 offensive to a reasonable person.

10 (b) A person is liable for constructive invasion of privacy when  
11 the defendant attempts to capture, in a manner that is offensive to  
12 a reasonable person, any type of visual image, sound recording,  
13 or other physical impression of the plaintiff engaging in a private,  
14 personal, or familial activity, through the use of a visual or auditory  
15 enhancing device, regardless of whether there is a physical trespass,  
16 if this image, sound recording, or other physical impression could  
17 not have been achieved without a trespass unless the visual or  
18 auditory enhancing device was used.

19 (c) An assault or false imprisonment committed with the intent  
20 to capture any type of visual image, sound recording, or other  
21 physical impression of the plaintiff is subject to subdivisions (d),  
22 (e), and (h).

23 (d) A person who commits any act described in subdivision (a),  
24 (b), or (c) is liable for up to three times the amount of any general  
25 and special damages that are proximately caused by the violation  
26 of this section. This person may also be liable for punitive damages,  
27 subject to proof according to Section 3294. If the plaintiff proves  
28 that the invasion of privacy was committed for a commercial  
29 purpose, the defendant shall also be subject to disgorgement to the  
30 plaintiff of any proceeds or other consideration obtained as a result  
31 of the violation of this section. A person who comes within the  
32 description of this subdivision is also subject to a civil fine of not

1 less than five thousand dollars (\$5,000) and not more than fifty  
2 thousand dollars (\$50,000).

3 (e) A person who directs, solicits, actually induces, or actually  
4 causes another person, regardless of whether there is an  
5 employer-employee relationship, to violate any provision of  
6 subdivision (a), (b), or (c) is liable for any general, special, and  
7 consequential damages resulting from each said violation. In  
8 addition, the person that directs, solicits, actually induces, or  
9 actually causes another person, regardless of whether there is an  
10 employer-employee relationship, to violate this section shall be  
11 liable for punitive damages to the extent that an employer would  
12 be subject to punitive damages pursuant to subdivision (b) of  
13 Section 3294. A person who comes within the description of this  
14 subdivision is also subject to a civil fine of not less than five  
15 thousand dollars (\$5,000) and not more than fifty thousand dollars  
16 (\$50,000).

17 (f) (1) The transmission, publication, broadcast, sale, offer for  
18 sale, or other use of any visual image, sound recording, or other  
19 physical impression that was taken or captured in violation of  
20 subdivision (a), (b), or (c) shall not constitute a violation of this  
21 section unless the person, in the first transaction following the  
22 taking or capture of the visual image, sound recording, or other  
23 physical impression, publicly transmitted, published, broadcast,  
24 sold or offered for sale, the visual image, sound recording, or other  
25 physical impression with actual knowledge that it was taken or  
26 captured in violation of subdivision (a), (b), or (c), and provide  
27 compensation, consideration, or remuneration, monetary or  
28 otherwise, for the rights to the unlawfully obtained visual image,  
29 sound recording, or other physical impression.

30 (2) For the purposes of paragraph (1), “actual knowledge” means  
31 actual awareness, understanding, and recognition, obtained prior  
32 to the time at which the person purchased or acquired the visual  
33 image, sound recording, or other physical impression, that the  
34 visual image, sound recording, or other physical impression was  
35 taken or captured in violation of subdivision (a), (b), or (c). The  
36 plaintiff shall establish actual knowledge by clear and convincing  
37 evidence.

38 (3) Any person that publicly transmits, publishes, broadcasts,  
39 sells, or offers for sale, in any form, medium, format, or work, a  
40 visual image, sound recording, or other physical impression that

1 was previously publicly transmitted, published, broadcast, sold,  
2 or offered for sale, by another person, is exempt from liability  
3 under this section.

4 (4) If a person's first public transmission, publication, broadcast,  
5 or sale or offer for sale, of a visual image, sound recording, or  
6 other physical impression that was taken or captured in violation  
7 of subdivision (a), (b), or (c), does not constitute a violation of this  
8 section, that person's subsequent public transmission, publication,  
9 broadcast, sale, or offer for sale, in any form, medium, format, or  
10 work, of the visual image, sound recording, or other physical  
11 impression, does not constitute a violation of this section.

12 (5) This section applies only to a visual image, sound recording,  
13 or other physical impression that is captured or taken in California  
14 in violation of subdivision (a), (b), or (c) after January 1, 2010,  
15 and shall not apply to any visual image, sound recording, or other  
16 physical impression taken or captured outside of California.

17 (6) Nothing in this subdivision shall be construed to impair or  
18 limit a special motion to strike pursuant to Section 425.16, 425.17,  
19 or 425.18 of the Code of Civil Procedure.

20 (7) This section shall not be construed to limit all other rights  
21 or remedies of the plaintiff in law or equity, including, but not  
22 limited to, the publication of private facts.

23 (g) This section shall not be construed to impair or limit any  
24 otherwise lawful activities of law enforcement personnel or  
25 employees of governmental agencies or other entities, either public  
26 or private who, in the course and scope of their employment, and  
27 supported by an articulable suspicion, attempt to capture any type  
28 of visual image, sound recording, or other physical impression of  
29 a person during an investigation, surveillance, or monitoring of  
30 any conduct to obtain evidence of suspected illegal activity or  
31 other misconduct, the suspected violation of any administrative  
32 rule or regulation, a suspected fraudulent conduct, or any activity  
33 involving a violation of law or business practices or conduct of  
34 public officials adversely affecting the public welfare, health, or  
35 safety.

36 (h) In any action pursuant to this section, the court may grant  
37 equitable relief, including, but not limited to, an injunction and  
38 restraining order against further violations of subdivision (a), (b),  
39 or (c).

1 (i) The rights and remedies provided in this section are  
2 cumulative and in addition to any other rights and remedies  
3 provided by law.

4 (j) It is not a defense to a violation of this section that no image,  
5 recording, or physical impression was captured or sold.

6 (k) For the purposes of this section, “for a commercial purpose”  
7 means any act done with the expectation of a sale, financial gain,  
8 or other consideration. A visual image, sound recording, or other  
9 physical impression shall not be found to have been, or intended  
10 to have been, captured for a commercial purpose unless it is  
11 intended to be, or was in fact, sold, published, or transmitted.

12 (l) (1) For the purposes of this section, “private, personal, and  
13 familial activity” includes, but is not limited to:

14 (A) Intimate details of the plaintiff’s personal life under  
15 circumstances in which the plaintiff has a reasonable expectation  
16 of privacy.

17 (B) Interaction with the plaintiff’s family or significant others  
18 under circumstances in which the plaintiff has a reasonable  
19 expectation of privacy.

20 (C) If and only after the defendant has been convicted of  
21 violating Section 626.8 of the Penal Code, any activity that occurs  
22 when minors are present at any location set forth in subdivision  
23 (a) of Section 626.8 of the Penal Code.

24 (D) Any activity that occurs on a residential property under  
25 circumstances in which the plaintiff has a reasonable expectation  
26 of privacy, including, but not limited to, a private residence,  
27 temporary familial lodging, hotel, motel, inn, and bed and  
28 breakfast.

29 (E) Other aspects of the plaintiff’s private affairs or concerns  
30 under circumstances in which the plaintiff has a reasonable  
31 expectation of privacy.

32 (2) “Private, personal, and familial activity” does not include  
33 illegal or otherwise criminal activity as delineated in subdivision  
34 (g). However, “private, personal, and familial activity” shall include  
35 the activities of victims of crime in circumstances under which  
36 subdivision (a), (b), or (c) would apply.

37 (m) (1) A proceeding to recover the civil fines specified in  
38 subdivision (d) or (e) may be brought in any court of competent  
39 jurisdiction by a county counsel or city attorney.

(2) Fines collected pursuant to this subdivision shall be allocated, as follows:

(A) One-half shall be allocated to the prosecuting agency.

(B) One-half shall be deposited in the Arts and Entertainment Fund, which is hereby created in the State Treasury.

(3) Funds in the Arts and Entertainment Fund created pursuant to paragraph (2) may be expended by the California Arts Council, upon appropriation by the Legislature, to issue grants pursuant to the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter 9 (commencing with Section 8750) of Division 1 of Title 2 of the Government Code).

(4) The rights and remedies provided in this subdivision are cumulative and in addition to any other rights and remedies provided by law.

(n) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. Section 1708.9 is added to the Civil Code, to read:

1708.9. (a) It is unlawful for any person, except a parent or guardian acting toward his or her minor child, to commit any of the following acts:

(1) By force, threat of force, or physical obstruction that is a crime of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person attempting to enter or exit a facility.

(2) By nonviolent physical obstruction, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person attempting to enter or exit a facility.

(b) For purposes of this section:

(1) "Facility" means any public or private school grounds, as described in subdivision (a) of Section 626.8 of the Penal Code, any health facility, as described in Section 1250 of the Health and Safety Code, or any lodging, including a private residence, hotel, temporary lodging facility, inn, motel, bed and breakfast, or any other location that provides permanent or temporary lodging to persons.

(2) To "interfere" means to restrict a person's freedom of movement.

1 (3) To “intimidate” means to place a person in reasonable  
2 apprehension of bodily harm to himself, herself, or another person.

3 (4) “Nonviolent” means conduct that would not constitute a  
4 crime of violence.

5 (5) “Physical obstruction” means rendering ingress to or egress  
6 from a facility impassable to another person, or rendering passage  
7 to or from a facility unreasonably difficult or hazardous to another  
8 person.

9 (c) A person aggrieved by a violation of subdivision (a) may  
10 bring a civil action to enjoin the violation, for compensatory and  
11 punitive damages, for injunctive relief, and for the cost of suit and  
12 reasonable attorney’s and expert witness’ fees. With respect to  
13 compensatory damages, the plaintiff may elect, at any time prior  
14 to the rendering of a final judgment, to recover, in lieu of actual  
15 damages, an award of statutory damages in the amount of five  
16 thousand dollars (\$5,000) per violation of paragraph (1) of  
17 subdivision (a), and one thousand dollars (\$1,000) per violation  
18 of paragraph (2) of subdivision (a).

19 (d) The Attorney General, a district attorney, or a city attorney  
20 may bring a civil action to enjoin a violation of subdivision (a),  
21 for compensatory damages to persons or entities aggrieved by the  
22 violation, and for the imposition of a civil penalty against each  
23 respondent. The civil penalty for a violation of paragraph (1) of  
24 subdivision (a) shall not exceed fifteen thousand dollars (\$15,000),  
25 or twenty-five thousand dollars (\$25,000) for a second or  
26 subsequent violation. The civil penalty for a violation of paragraph  
27 (2) of subdivision (a) shall not exceed five thousand dollars  
28 (\$5,000), or twenty-five thousand dollars (\$25,000) for a second  
29 or subsequent violation.

30 (e) This section shall not be construed to impair the right to  
31 engage in any constitutionally protected activity, including, but  
32 not limited to, speech, protest, or assembly.

33 (f) The adoption of the act that added this section is an exercise  
34 of the police power of the state for purposes of protecting the  
35 health, safety, and welfare of the people of California, and this  
36 section shall be liberally construed to effectuate that purpose.

37 (g) *This section shall not be construed to restrict, inhibit,*  
38 *prevent, or bring a chilling effect upon any actions by a person*  
39 *that are reasonable under the circumstances to protect, secure,*



1 *provide safety to, or prevent illness in any child or adult in a*  
2 *facility.*

O